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Supreme Court, U.S.
FILED
AUG 16 1996
CLERK

No. 95-1897

In The

Supreme Court of the United States

October Term, 1995

ANTHONY MACALUSO,

Petitioner,

v.

DERRICK ANDERSON, dba,
ANDERSON STUDIOS,

Respondent,

INDUSTRIAL COMMISSION OF ARIZONA, SPECIAL FUND DIVISION/NO INSURANCE SECTION,

Respondent Party in Interest.

On Petition For A Writ Of Certiorari To The Arizona Supreme Court

REPLY TO BRIEF IN OPPOSITION

BERNARD I. RABINOVITZ
721 N. 4th Avenue
Tucson, AZ 85705
Tel. (520) 624-5526
1-800-365-0821
Attorney for Petitioner

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

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RESPONSE TO OBJECTIONS TO GRANTING WRIT OF CERTIORARI

I.

THIS COURT HAS JURISDICTION TO REVIEW THE FINAL ORDER OF THE ARIZONA SUPREME COURT

The final order of the Arizona Supreme Court merely indicated that after accepting review, hearing oral argument, and asking for and receiving further written briefing including amicus curiae briefing, the Arizona Supreme Court suddenly decided that review had been improvidently granted. As the respondent notes, no further explanation was given, nor any further opinion issued which might possibly have contained reference to any federal question or constitutional issue. However, having exhausted his state remedies, Petitioner had no recourse but to turn to this Honorable Court. The order of the Arizona Supreme Court was final, and is reviewable by this Court under 28 U.S.C. §1257(a).

Although Petitioner did not specifically reference the United States Constitution, he did raise the issue of an unconstitutional taking of property in both the Arizona Court of Appeals and the Arizona Supreme Court. No particular form of words is essential for the validity of a state statute to be drawn in question on the ground that it is repugnant to the U.S. Constitution; the only requirement for a presentation adequate to preserve an issue is that the claim and the ground therefor be brought to the attention of the state court in some fashion. *Street v. New York*, 394 U.S. 576 (1969). In this case, both state appeals courts declined to address the constitutional issues. Similar in this aspect is *Chambers v. Mississippi*, wherein the

issue of denial of due process was held to be properly before the U.S. Supreme Court, even though no federal constitutional basis for the argument was asserted until a motion for new trial, and the State Supreme Court failed to pass on it. 410 U.S. 284, 290 n. 3 (1973).

The respondent asserts that the decision of the Arizona Court of Appeals is "totally adequate to dispose of the issues raised by the Petitioner to that appellate court." Respondent's Brief No. 6. However, as noted in the Petition, that court failed to address several issues that were raised, including the issue of Petitioner having been deprived of a property right. It is clear, then, that there is nothing in the record which could be said to form an independent and adequate reason grounded in state law as to the disposition of these issues: *Michigan v. Long*, 463 U.S. 1032 (1983). (Whether the right was denied or not given due recognition by the [state court] . . . is a question as to which the plaintiffs are entitled to invoke our judgment.) *Love v. Griffith*, 266 U.S. 32, 33-34 (1924), cited in *Henry v. Mississippi*, 379 U.S. 443, 446 (1965).

II.

CONCLUSION

This Honorable Court has jurisdiction to review the final order of the Arizona Supreme Court under 28 U.S.C. §1257(a), as important federal constitutional issues are involved, the bases for which were raised in the state courts below.

Respectfully submitted,

BERNARD I. RABINOVITZ
Attorney for Petitioner